

REMARKS

Applicants request favorable reconsideration of this application in view of the foregoing amendments and the following remarks. Of claims 1-9, 11, and 12 that were pending in the application, claims 1-4, 11, and 12 were rejected in the Office Action. Applicants appreciate the indication of allowable subject matter in claims 5-9. By way of this Amendment, claims 5 and 12 have been amended to correct clerical errors and, therefore, claims 1-9, 11, and 12 remain pending for further consideration.

As later discussed, the Examiner failed to address each of the arguments previously set forth by the Applicants' undersigned counsel in the Amendment and Reply filed on April 7, 2005. Accordingly, if the Examiner decides, on whatever basis, to uphold the rejection of claims 1-4 and 11, the rejection should be made via another Office Action, *i.e.*, an Advisory Action would be inappropriate at this stage of prosecution.

1. Information Disclosure Statement

Applicants appreciate the indication that the Examiner has considered each of the references submitted with the Information Disclosure Statements filed on September 25, 2003 and on April 7, 2005. Applicants respectfully request a similar indication that the Examiner has considered (by way of Examiner initials) each of the references listed on the Form PTO/SB/08 submitted with the Information Disclosure Statement filed on August 8, 2005.

2. Rejection of Claims 1-4, 11, and 12 under 35 U.S.C. § 102(b)

The Examiner rejected claims 1-4, 11, and 12 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,199,399 ("Shibuya"). For at least the following reasons, Applicants respectfully traverse this rejection.

a. Claims 1-4 and 11

As originally presented, claim 1 (*i.e.*, the claim from which claims 2-4 depend) recites a control apparatus for an automotive vehicle. This control apparatus includes, among other possible things (*italic emphasis added*):

a continuously variable transmission associated with a vehicular engine, including a belt that transmits a revolution of a primary pulley to a secondary pulley, and that is enabled to make a gear shift by modifying a pulley ratio between the primary and secondary pulleys with a hydraulic;

a belt slip determining section that determines if a slip of the belt between at least one of the primary and the secondary pulleys occurs; and

an output section that outputs a signal to command an engine control unit to increase an engine speed by a predetermined engine speed when the belt slip determining section determines that the slip therebetween occurs.

Similarly, claim 11 recites a control method for an automotive vehicle, which includes, among other possible things: “a continuously variable transmission associated with an engine and including a belt that transmits a revolution of a primary pulley to a secondary pulley that is enabled to make a gear shift by modifying a pulley ratio between the primary and secondary pulleys with a hydraulic.” This control method includes, among other possible steps (*italic emphasis added*):

determining if a belt slip between at least one of the primary and the secondary pulleys occurs; and
outputting a signal to command an engine control unit to increase an engine speed by a predetermined engine speed at a time of determining that the slip therebetween occurs.

For at least the following reasons Shibuya fails to teach or suggest the control apparatus recited in claim 1 or the control method recited in claim 11.

As set forth in Applicants’ previous response filed on April 7, 2005, Shibuya teaches increasing the engine speed “to prevent” belt slip. *See, e.g.*, col. 6, lines 28-31, 59-66. In contrast, claim 1 recites that the engine speed is increased “when the belt slip determining section *determines*” that a belt slip has occurred. Similarly, claim 11 recites “*determining* if a belt slip between at least one of the primary and the secondary pulleys occurs.” As a result, whereas Shibuya teaches preventing belt slippage, the invention recited in claims 1 and 11 addresses determining when belt slippage occurs. Moreover, in the “Response to Arguments” section of the Office Action, the Examiner completely failed to address this shortcoming of Shibuya. For this reason alone, if the Examiner decides, on whatever basis, to uphold the rejection of claims 1-4 and 11, the rejection should be made via another Office Action, *i.e.*, an Advisory Action would be inappropriate at this stage of prosecution.

As Shibuya fails to teach or suggest at least the above-italicized limitations of claims 1 and 11, Shibuya can not be used to reject these claims, or any claim dependent thereon, under 35 U.S.C. § 102(b). Moreover, as claims 2-4 depend from claim 1, each of these dependent claims is also allowable over Shibuya, without regard to the other patentable limitations recited therein. Accordingly, Applicants respectfully request a withdrawal of the rejection of claims 1-4 and 11 under § 102(b).

b. Claim 12

As amended, claim 12 recites a control apparatus for an automotive vehicle. This control apparatus includes, among other possible things (*italic emphasis added*):

- an engine control unit;
- an oil pump, which serves as a hydraulic source, driven by an engine;
- a continuously variable transmission associated with the vehicular engine, the continuously variable transmission comprising:
 - a primary pulley;
 - a secondary pulley; and
 - a belt that transmits a revolution of the primary pulley to the secondary pulley, wherein the belt is enabled to make a gear shift by modifying a pulley ratio between the primary and secondary pulleys with the hydraulic;
- a hydraulic supplying section that supplies an original hydraulic and a control hydraulic to the primary and secondary pulleys to control the pulley ratio;
- a hydraulic pressure determining section that is configured to determine whether a pressure of the original hydraulic of the hydraulic supplying section is equal to or below a predetermined hydraulic pressure when an engine idling is carried out during a vehicular stop; and*
- an output section that outputs a signal to command the engine control unit to increase the engine idling speed by a predetermined engine speed.

For at least the following reasons Shibuya fails to teach or suggest the control apparatus recited in claim 12.

The Examiner asserts that Shibuya teaches a “hydraulic pressure control valve mechanism (20) for controlling the optimum hydraulic pressure (i.e., column 4, lines 5-34)[.]” Although this may be true and although Shibuya teaches (in steps S2-S4) detecting whether the engine is in an idle state (*see* col. 5, lines 21-34), Shibuya fails to teach or suggest that the hydraulic pressure control valve mechanism 20 determines “whether a pressure of the original hydraulic of the hydraulic supplying section is equal to or below a predetermined hydraulic pressure when an engine idling is carried out during a vehicular stop,” as recited in claim 12.

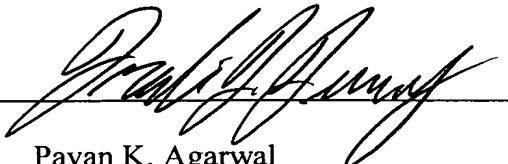
As Shibuya fails to teach or suggest at least the above-italicized limitation of claim 12, Shibuya can not be used to reject the claim under 35 U.S.C. § 102(b). Accordingly, Applicants respectfully request a withdrawal of the rejection of claim 12 under § 102(b).

CONCLUSION

For the aforementioned reasons, claims 1-9, 11, and 12 are now in condition for allowance. A Notice of Allowance at an early date is respectfully requested. The Examiner is invited to contact the undersigned if such communication would expedite the prosecution of the application.

Respectfully submitted,

Date NOV 29 2005

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THE COMMISSIONER IS HEREBY AUTHORIZED TO CHARGE ANY ADDITIONAL FEES WHICH MAY BE REQUIRED REGARDING THIS APPLICATION UNDER 37 C.F.R. §§ 1.16-1.17, OR CREDIT ANY OVERPAYMENT, TO DEPOSIT ACCOUNT NO. 19-0741. SHOULD NO PROPER PAYMENT BE ENCLOSED HERewith, AS BY A CHECK BEING IN THE WRONG AMOUNT, UNSIGNED, POST-DATED, OTHERWISE IMPROPER OR INFORMAL OR EVEN ENTIRELY MISSING, THE COMMISSIONER IS AUTHORIZED TO CHARGE THE UNPAID AMOUNT TO DEPOSIT ACCOUNT NO. 19-0741. IF ANY EXTENSIONS OF TIME ARE NEEDED FOR TIMELY ACCEPTANCE OF PAPERS SUBMITTED HERewith, APPLICANT HEREBY PETITIONS FOR SUCH EXTENSION UNDER 37 C.F.R. § 1.136 AND AUTHORIZES PAYMENT OF ANY SUCH EXTENSIONS FEES TO DEPOSIT ACCOUNT NO. 19-0741.